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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,241	01/09/2007	Heinz Riess	306.46102X00	6951
20457	7590	01/02/2009	EXAMINER	
ANTONELLI, TERRY, STOUT & KRAUS, LLP				TILLMAN, JR, REGINALD S
1300 NORTH SEVENTEENTH STREET				
SUITE 1800				
ARLINGTON, VA 22209-3873				
				3641
ART UNIT		PAPER NUMBER		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/575,241	RIESS ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	REGINALD TILLMAN, JR	3641	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 14 November 2008.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) \_\_\_\_\_ is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 3-8 is/are allowed.  
 6) Claim(s) 1,2 and 9-13 is/are rejected.  
 7) Claim(s) 3-8 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 10 April 2006 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date <u>5/1/07</u> .	6) <input type="checkbox"/> Other: _____ .

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Herstal (BE 866,822).

**Re claim 1**, Herstal teaches **a projectile** (Fig 1 p 1) with **an intercalation** (Fig 1 p 5), for fitting into **a cartridge** (page 4 first paragraph "la douille") with **a cylindrical free space** (Fig 1 underside of p 1), and **a plunger** (Fig 1 p 10) having **a diameter** (Fig 1 p 6) adapted to the free space.

**Re claim 2**, Herstal teaches the free space exhibits **a projectile spigot** (Fig 1 p 8); the plunger exhibits **a bore** (Fig 1 p 11); the spigot and bore are adapted to one another in diameter (Fig 2; pieces 1 & 2 are adapted to one another in diameter); wedging elements which wedge in the course of firing (Fig 2; after firing, piece 2 wedges with piece 1).

**Re claim 9**, Herstal teaches a projectile where the nose of the projectile merges via **a bevel** (Fig 1, p 3 merges via a bevel), **an adjoining shoulder** (Fig 1, p 2) running parallel to axis of symmetry, and **a plane face** (plane face sides attaching to p 3) extending as far as the outer periphery.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 10, 11, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herstal as applied to claim 1 above, and further in view of Schmitz (US 4,538,520).

**Re claims 10 and 13,** Herstal does not teach a projectile wherein the intercalation consists of a plastic material and the projectile consists of a readily deformable material. Schmitz teaches a projectile wherein the intercalation consists of **a plastic material** (elastically deformable plug col 2, line 20) and the projectile consists of **a readily deformable material** (lead head 6 col 2, line 20) and projectile comprises **lead** (lead head 6 col 2, line 20). Applicant is combining known prior art elements and known materials into one invention. It would have been obvious for one skilled in the art to combine the teachings of Herstal and Schmitz. The motivation would be choosing an appropriate material for the intended application.

**Re claim 11,** Herstal as combined with Schmitz teaches a propelling charge (Fig 1, p 5).

5. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Herstal in view of Schmitz as applied to claim 11 and further in view Maki (US 4,587,905).

**Re claim 12**, the combination of Herstal and Schmitz fail to disclose any detail of the cartridge itself. Maki teaches a case retracted inwards 180 degrees (Fig 4, p 15). It would have been obvious for one skilled in the art to modify the case taught by Herstal to the case taught by Maki to prevent the projectile from coming out of the case (col 3, lines 67-68).

***Allowable Subject Matter***

6. Claims 3-8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

7. Applicant's arguments with respect to claims 1, 2, and 9-13 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

Art Unit: 4155

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to REGINALD TILLMAN, JR whose telephone number is (571) 270-7010. The examiner can normally be reached on Monday to Thursday 730 to 500.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571-272-6873. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/REGINALD TILLMAN, JR/  
Examiner, Art Unit 3641  
12/10/08

/Michael J. Carone/  
Supervisory Patent Examiner,  
Art Unit 3641

Application/Control Number: 10/575,241  
Art Unit: 4155

Page 6